



Board of Adjustment
PO Box 120
Town of Fremont, New Hampshire 03044
Minutes of March 30, 2010
Approved April 20, 2010

Members present: Chairman Doug Andrew, Members John (Jack) Downing, Jack Baker and Alt/recording Secretary Meredith Bolduc.

Mr. Andrew opened the meeting at 7:40 pm.

At the August 25, 2009 meeting Mr. Andrew designated Alternate Meredith Bolduc to fill the vacancy on the Fremont Board of Adjustment until such time as the Selectmen have appointed someone to serve as a full Board Member to fill that vacancy. It was noted that the appointment remains in effect.

There was a brief conversation relative to the need for more Board of Adjustment members.

MINUTES

Mr. Downing made the motion to accept the minutes of the February 23, 2010 meeting as written. Motion seconded by Mrs. Bolduc with unanimous favorable vote except for Mr. Baker who abstained as he was not present at that meeting.

Point of Order

At 7:42 pm Mr. Andrew announced that at this time he would step down as a Zoning Board of Adjustment member as he is an abutter in the next case. Vice-Chairman Boisvert was not present so it was agreed by the Members that Mr. Baker would serve as acting Vice-Chairman for this case.

Case # 09-002
Rankin Family Trust
Emma Rankin
522 Beede Hill Road
MAP 6 LOT 001

Present: Owner Emma J. Rankin; Matthew Jenson

Mr. Baker opened this Public Hearing at 7:43 pm and stated that this is a continuation of the January 26, 2009 portion of this Public Hearing which was continued to 7:30 pm on March 30, 2010 to allow additional time for; 1) the applicant to file for a Major Project Standard Dredge and Fill application with the NH Department of Environmental Services; and 2) for the Members to consider the Special Exception conditions as they pertain to this case.

Mrs. Bolduc re-read Article IX-H of the Fremont Zoning Ordinance as follows.

Special Exceptions: The Board of Adjustment, after proper public notice and public hearing, may grant special exceptions for the following uses within the district, the application for such uses having been referred by the Planning Board for site plan review, the Conservation Commission, the Health Officer and Building Inspector and reported upon by all four (4) prior to the public hearing or thirty (30) days have elapsed following such referral without receipt of such reports.

- 1. Recreation, including golf courses, parks (but not an amusement park) boating, fishing, landings, picnic areas and any non-commercial open-air recreation use, provided there are adequate provision for disposal of waste products and for parking.*
- 2. Dredging, filling, drainage (in compliance with the RSA 149:8a) or otherwise altering the surface configuration of the land; streets, roads and other access ways and utility rights if essential to the productive use of land if so located and constructed as to minimize any detrimental impact of such uses upon the wetland and watershed protection areas.*
- 3. Proper evidence to this effect shall be submitted in writing to the Board of Adjustment and shall be accompanied by the findings of a review by the Rockingham County Soil Conservation Service District of the environment effects of such proposed use upon the wetland and watershed protection area in question.*

Mr. Baker stated that there is not a full five Member Board present and related to the applicant that she has the option of waiting for the presence of a full Board for any decisions. It was explained that it takes concurring votes of three voting Members of the Board to decide in favor of an applicant (or reverse any action of the administrative official). Mrs. Rankin opted to move forward with the three voting members present.

Mrs. Bolduc stated that the notification of certified notice of this Hearing has now been received from abutter all abutters.

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Mr. Baker reiterated the Conservation Commissions written comments as per the comment sheet.

The Conservation Commission recommends that the Special Exception should not be granted for the following reasons:

- 1. No provision for it in Article IX Section H*
- 2. To avoid legal conflict with State RSA's governing Prime Wetlands, that the ZBA contact the Wetlands Bureau for recommendations on how to proceed.*

It was noted that the Code Enforcement Officer previously issued the comment that: *It is my opinion that the zoning ordinance allows for a special exception for areas adjacent to wetlands (Fremont Watershed Protection areas) and that this request for special exception is consistent with our zoning.*

The Board revisited and reviewed correspondences and reports that were received and reviewed at the January 26, 2010 portion of this public hearing as follows:

1. January 14, 2010 Wetland Buffer Report from Michael Coumo, NH Certified Wetland and Soil Scientist with the Rockingham County Conservation District (RCCD), as a result of his visit to the property.
2. January 22, 2010 correspondence from Conservation Commission Member Bill Knee to Mr. Coumo requesting a professional assessment and a response to his concerns with the manner in which the reconfiguration of the land was accomplished. Mr. Knee related particularly concerned because the wetland in question has been designated as a Prime Wetland.
3. January 25, 2010 correspondence from Leonard Lord, District Manager with RCCD offering supplemental information as a result of Mr. Knee's correspondence.

(see all reports and correspondences in file)

The Board received and reviewed a March 30, 2010 Letter of Deficiency from NH DES Senior Wetlands Inspector Frank Richardson. NH DES Wetland Compliance Specialist Eben Lewis was named as the contact person for any questions. Mr. Lewis' cover note to the Letter of Deficiency said: *In summary the DES will entertain the project as follows: removing any fill within the Prime Wetland and replanting the Prime Wetland and the 100-foot Prime Wetland Buffer with blueberry. No permit has been approved by DES for any work done in the wetland or buffer. DES requires the following:*

- 1. Immediately retain qualified professionals to develop and implement remediation plans.*
- 2. By May 31, 2010 submit a Standard Dredge and Fill application to retain the impacts within the Prime Wetland and the 100-foot buffer to enlarge existing blueberry orchard.*
- 3. By May 31, 2010, submit a restoration plan to DES for review and approval.*
- 4. Retain a qualified environmental consultant or landscape designer to supervise the implementation of the restoration plan and to submit the restoration progress reports.*
- 5. Implement the restoration plan only after receiving written approval and as conditioned by DES.*

(see file)

It was noted that Mr. Lewis previously advised that the Towns permitting process through zoning, and the States permitting process through application for permits are two separate processes and there would be no legal conflict between the Town and the State as long as any Town approval is conditioned upon the favorable approval and granting a Major Project Standard Dredge and Fill permit by the New Hampshire Department of Environmental Services (DES). Mrs. Bolduc related to

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Mrs. Rankin that, as stated in the Board's January 29, 2010 correspondence to her, she will be expected to file a Major Project Standard Dredge and Fill application with the NH DES whether or not a Special Exception is granted by the ZBA. Mrs. Rankin agreed.

The Board referred to the plan previously submitted by Mrs. Rankin which showed the entire 22.6 acre parcel of Map 6 Lot 001, the locations of the existing house, sheds, greenhouse and locations of all abutters. The drawing also showed the wetland (Prime Wetland #14) and the area of recent clearing/filling through the 100' Watershed Protection area and up to the line of wetland.

Mrs. Rankin asked if the owners of properties that have wetlands were notified of the change in status to prime. Mrs. Bolduc answered that they were not individually notified, but notices of the November 28, 2007 Public Hearing were posted throughout the Town and in the Rockingham County Newspaper. This Public Hearing was for the Planning Board to consider the proposed amendments to the Fremont Zoning Ordinance Article IX Section G- Prime Wetland and to send it on to the voters to approve or reject. The notice of decision was also duly noticed and posted in several places around Town. The Wetland Evaluation Report that denoted which wetland systems were being considered as prime was also available to the public. Mrs. Bolduc stated further that the designation of the wetlands systems as Prime Wetlands was decided by the vote of the people at the 2008 Town Meeting.

Mr. Baker polled the Members to see if they agreed with Wetland Scientist Michael Coumo that agriculture is allowed within the Watershed Protection Area, that growing blueberries is a relatively low impact way to productively use the land within the Watershed Protection Area, and that minimal alteration of the surface configuration of the land is a reasonable request to allow for the productive use of the land within the Watershed Protection Area. The Members unanimously agreed by individual vote.

Mr. Baker polled the Members to see if they agreed with Mr. Coumo that in order to assure that further "detrimental impacts are minimized", a naturally vegetative buffer of at least twenty five (25) feet be re-established between the cultivated land and the wetland and that any disturbed soils within the Watershed Protection Area are adequately seeded and mulched. The Members unanimously agreed by individual vote.

There was a discussion relative to pesticides and herbicides in the wetland and the Board collectively agreed with Mr. Knee that no pesticides or herbicides of any kind should be utilized. They further agreed that only low phosphate, slow release nitrogen fertilizer or limestone, should be used within the Watershed Protection Area.

The Board addressed the three questions that must be answered to decide whether or not a special exception can be legally granted.

1. Is the use one that is ordinarily prohibited in the district?
By vote, Mr. Downing, Mrs. Bolduc and Mr. Baker unanimously agreed that growing blueberries would fall under the category of agriculture which is not prohibited in the district.
2. Is the use specifically allowed as a special exception under the terms of the ordinance?
By vote, Mr. Downing, Mrs. Bolduc and Mr. Baker unanimously agreed that under the terms of the ordinance dredging, filling and altering the surface configuration of the land are

specifically allowed as a special exception under the ordinance.

3. Are the conditions specified in the ordinance for granting the exception met in this case?

Condition #1: Is the use essential to the productive use of the land?

By vote, Mr. Downing, Mrs. Bolduc and Mr. Baker unanimously agreed that blueberry farming would be essential to the productive use of the land.

Condition #2: Is the use located and constructed as to minimize any detrimental impact upon the wetland and watershed protection area?

By vote, Mr. Downing, Mrs. Bolduc and Mr. Baker unanimously agreed that the blueberry plants could be located as to comply with this condition.

It was the unanimous consensus of the Board that the exception is allowed by the ordinance and the specific conditions under which the exception may be granted have been met.

After careful consideration by the Board, Mr. Downing made the motion that, based on the information presented and on the Board's determination that the exception is allowed by the ordinance and the specific conditions under which the exception may be granted have been met, the Fremont Board of Adjustment hereby grants a Special Exception to the terms of Article IX Section H of Fremont Zoning Ordinance to Emma J. Rankin/Rankin Trust, pursuant to the drawn plan presented, to allow a portion of the clearing and alteration of the land that has already taken place on Map 6 Lot 001, 522 Beede Hill Road, within the one hundred (100') foot Watershed Protection Area of a wetland (Prime Wetland #14) to remain closer than one hundred (100) feet, but not closer than twenty five (25) feet, of the wetland with the following conditions:

1. That the owner applies for a Major Project Standard Dredge and Fill application with the NH Department of Environmental Services. It is understood that if this and all required State approvals and permits are not granted, the Special Exception granted herein is not valid and is considered null and void.
2. That a minimum of twenty five (25) feet of naturally vegetated buffer shall be re-established between the cultivated land and the wetland, and that any disturbed soils within the Watershed Protection Area shall be adequately seeded and mulched and not be used or maintained as lawn area.
3. The use pesticides or herbicides of any kind shall be prohibited. In addition, only low phosphate, slow release nitrogen fertilizer or limestone, should be used within the entire one hundred (100') foot Watershed Protection Area.
4. That no further or additional dredging, filling, drainage or altering the surface configuration of the land shall be allowed closer than one hundred (100') feet to any wetland on the property .
5. These restrictions shall run with the land and shall be included in any subsequent deeds to this parcel or subdivision of this parcel.
6. RSA 676:17 shall apply.

Motion seconded by Mrs. Bolduc with unanimous favorable vote.

Each condition was explained to Mrs. Rankin and she stated that she did understand the conditions.

The applicant was instructed that there is a 30 day appeal period and that the notice of decision of this action will be recorded at the Rockingham Registry of Deeds and will be referenced to the property deed. Recording fees were submitted.

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At 8:25 pm Mr. Downing made the motion to close this Public Hearing.
Motion seconded by Mrs. Bolduc with unanimous favorable vote.

POINT OF ORDER

At 8:25 pm Mr. Andrew rejoined the Board and resumed the position as the Chairman.

Case # 010-003
Jeremy & Amanda Lennon
MAP 2 LOT 129
Route 111A

Present: Owners Jeremy and Amanda Lennon; abutters Andy Horvath, Thomas Stanley, Konstantinos Orfanos, Charley Forsythe, Lynne Smith, Christopher Aubin, and Remi & Kathy Janzegers.

Mr. Andrew opened this Public Hearing at 8:25 pm and read the Public Notice of the Hearing as follows:

In accordance with NH RSA 676:7, you are hereby notified that the Fremont Zoning Board of Adjustment will hold a Public Hearing at 8:00 pm on Tuesday March 30, 2010 at the Fremont Town Hall, downstairs Land Use meeting room, for Jeremy and Amanda Lennon for property located on Route 111A (Brentwood Road), Fremont, NH, Map 2 Lot 129.

The applicants are seeking a Variance from the terms of Article IV Section 2, as set forth in the Town of Fremont Zoning Ordinance, to allow for their 52.35 acre property to be considered a single family house lot without the proper minimum frontage.

You are invited to appear in person or by counsel and state reasons why the appeal should or should not be granted. Written comments will be accepted up until the date of the hearing.

Mr. Andrew explained the purpose of the Board and the procedure for a Variance including the five conditions which must be met in order for a Variance to be granted. He then read Article IV Section 2 of the Fremont Zoning Regulations in effect at the time of the 1981 creation of the subject parcel by subdivision.

Section 2. *Every building lot shall have a minimum contiguous lot frontage on Federal, State and Town highways, lakes, ponds, and rivers of one hundred and fifty (150) feet provided that where lots are located on exterior side of a curving street or shoreline a shorter front dimension shall be permitted, provided that the average width of the lot measured across its center shall be one hundred and fifty (150) feet.*

Building lots on which multiple family dwellings are located shall have an additional frontage of twenty (20) feet per family unit when less than five (5) family units and forty (40) feet per family unit when five (5) or more family units are considered. ie: (one hundred and fifty (150) plus twenty (20) multiplied by the number of family units) or (one hundred and fifty (150) plus forty (40) multiplied by the number of family units).

It was noted that this hearing was noticed on March 9, 2010 at the Fremont Post Office and Fremont Town Hall and in the March 12, 2010 edition of the Manchester Union Leader. The applicant and all abutters were notified via certified mail on March 12, 2010 and all returns have been received except for that of abutters Weed, Gristmill, LLC and Weymouth. The application package included the application, several copies of a plan, proper check amount, a current list of abutters, letter of intent, and a March 4, 2010 Code Enforcement letter of denial.

Mr. Andrew related to the applicants that there is not a full Board present and that they have the option of waiting for a full Board for a decision. It was explained that it takes concurring votes of three voting Members of the Board to decide in favor of an applicant (or reverse any action of the administrative official). The applicants opted to continue with the four members present.

Comment sheets were received from the following, with comments in italics:

Conservation Commission: *There are prime wetlands and a stream on the lot and the Conservation Commission would like a condition stating that there shall be no further subdivision of the lot. The Conservation Commission requests the landowner consider placing a Conservation Easement on the portion that contains the wetlands.*

Health Officer: *No comment*

Code Enforcement Officer: *Existing lot ok.*

Fire Chief: *Driveway should have a turn-around to allow fire apparatus an area to turn around. I believe that this will be a long driveway to access the buildable area.*

It was noted that, as per the Building Officials March 4, 2010 correspondence, parcel 2-129 was created through a December 30, 1981 subdivision. At that time, and until 1987, a lot was required to have 150' of frontage. The plan is recorded as D-10573.

In his March 4, 2010 cover letter Mr. Lennon related that "this land was approved for subdivision and has road frontage of 91.58'. If granted this variance would enable me to build a single family home on the property for my own use".

The Board reviewed the plan submitted by Mr. Lennon. The plan used for this submission was an original November 1981 subdivision plan drawn by Vernon Dingman III for William and Marie Angelini, dated November 1981 and recorded at the Rockingham County Registry of Deeds as D-10573. The plan showed six lots subdivided from the front of the main parcel (Map 2 Lot 129) and a 91.58' right-of-way left to access the remaining 52.35 acre parcel. The plan was modified by Mr. Lennon to show an existing man-made pond, locations of proposed house, garage, barn, septic, well and locations of all existing abutting properties with current owners.

Mrs. Bolduc said that the access to the remaining parcel indicated that in 1981 when the previous owner subdivided the parcel he apparently had in mind to eventually build a road as the access appears to be approximately 50' wide with a flair at the entrance where it meets RT 111A that increases the total frontage to 91.58'. The required frontage at that time was 150'. Mr. Lennon is seeking a variance of approximately 59'.

Mr. Lennon explained that he purchased the property as six 1-acre parcels and one 52.35 acre parcel. He is seeking a Variance to the 150' frontage requirement so that he will not need to build a road for a single home. This prompted a conversation relative to the access being a road vs a driveway and several abutters present stated that they would rather see a driveway. Mrs. Bolduc reminded those present that the issue here is a requested Variance to the required 150' frontage, not a road/driveway issue.

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Mr. Lennon asked if the intent of the ordinance was so that narrow lots would not be created. He pointed out that his parcel is 52.35 acres. It was noted that the lot has a width in excess of 1,500'.

Mr. Andrew asked if the abutters had any comments. Most of the Abutters spoke in favor of granting the Variance. Mr. Horvath added that since this would be a long driveway he would like to see a turn-around for fire apparatus for obvious safety reasons.

Mr. Forsythe voiced objection to granting the Variance. He said that Mr. Lennon knew he did not have enough frontage for the back lot and if he had kept one of the house lots he would have had enough. Mr. Lennon answered that he did not know the short frontage was an issue, but if he had he could have adjusted the frontage of the 2 lots that abut the access to make the required frontage for the 52.35 acre parcel and possibly adjusted the lot lines in the back so they kept the required one acre.

There was a question of a State driveway permit. Mr. Lennon showed a driveway permit, but Mr. Forsythe felt that it was for two of the front lots and not for access to the back 52.35 piece (Map 2 Lot 129).

After some discussion the Members agreed that a site visit of the property is necessary. At 9:15 pm Mrs. Bolduc made the motion to continue this Public Hearing to 6:30 pm on Thursday April 8, 2010 at the property for the purpose of a site visit, and to 7:30 pm on April 20, 2010 at the Fremont Town Hall.

Motion seconded by Mr. Downing with unanimous favorable vote.

CORRESPONDENCE

There was no incoming correspondence.

Next meeting: scheduled for April 20, 2010.

At 9:17 pm Mr. Downing made the motion to adjourn.

Motion seconded by Mr. Baker with unanimous favorable vote.

Respectfully submitted,

Meredith Bolduc, recording secretary
